SUPREME COURT OF THE UNITED STATES.

No. 116.

RICHARD EELLS, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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J. & G. S. Gideon, printers.

Citation to the Governor and Attorney General of Illinois.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To his excellency the Governor of the State of Illinois, and the attorney general of said State, greeting:

Whereas Richard Eells has obtained the allowance of our writ of error to the supreme court of the State of Illinois directed, to remove into the said Supreme Court, to be holden at the city of Washington on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an indictment wherein the People of the State of Illinois, in that indictment, lately recovered against the said Richard the sum of four hundred dollars, fine and costs, as by the said record in the said supreme court aforesaid remaining appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said defendant we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this 26th day of September, in the year of our Lord one thousand eight hundred and forty-four, and in the 68th year of the American independence.

Attest, JOHN McLEAN,
Justice Sup. Court U. States, 7th circuit.

I do hereby admit service of the within citation, by the exhibition of the same, and the receipt of a copy thereof.
Illinois, 18th October, 1844.

THOMAS FORD,
Governor of the State of Illinois.

I do hereby admit service of the within citation, by the exhibition of the same, and the receipt of a copy thereof.
Illinois, 19th October, 1844.

J. A. McDOUGALL,
Attorney General of the State of Illinois.

Writ of Error.

The United States of America, to the honorable the judges of the supreme court of the State of Illinois, greeting:

Whereas in the record and process, and also in the rendering judgment in a certain indictment which was in the said court, between Peo-

ple of the State of Illinois, plaintiff, and Richard Eells, defendant, manifest error hath intervened, as it is said, to the great damage of the said Richard, as by his complaint we are informed; and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you, that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court; so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this first day of October, in the year of our [L. S.] Lord one thousand eight hundred and forty-four, and in the 69th year of the American independence.

Attest, JAMES F. OWINGS, *Clerk.*

I allow this writ of error; the clerk will issue it on the defendants giving bond and security, as the statute requires, in the sum of eight hundred dollars.

JOHN McLEAN,
Justice Sup. Court U. States, 7th circuit.

To the clerk of the circuit court U. States for Illinois.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Illinois, greeting:

Because in the record and proceedings, as in the rendition of the judgment of a plea which is in the supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between the People of the State of Illinois and Richard Eells, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statutes or commission, a manifest error hath happened to the great damage of the said Richard Eells, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things

concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this seventeenth day of July, in the year of our [L. S.] Lord eighteen hundred and forty-four.

JAMES F. OWINGS,
Clerk circuit court U. S. dist. Illinois.

STATE OF ILLNOIS, *Sangamon county:*

In the Supreme Court.

Be it remembered, that on the fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three, in the clerk's office of the supreme court of the State of Illinois, the following record in appeal was filed by the said Richard Eells, the plaintiff in error hereinafter named.

STATE OF ILLINOIS, *Adams county, sct:*

Pleas before the honorable Stephen A. Douglass, at a circuit court holden at the court house, in Quincy, in and for said county of Adams, and State of Illinois, on Tuesday, the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and forty-three.

Present, the honorable Stephen A. Douglass, one of the justices of the supreme court of the State of Illinois, assigned for judicial duties to the 5th judicial circuit of said State.

THE PEOPLE OF THE STATE OF ILLINOIS, plaintiffs,
vs.
RICHARD EELLS, defendant. } Indictment for secreting slave.

Be it remembered, that heretofore, to wit, on the twenty-first day of September, in the year of our Lord one thousand eight hundred and forty-two, an order is entered upon the records of said circuit court, in the *records* and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, plaintiffs,
vs.
RICHARD EELLS, defendant. } Indictment for secreting slave.

Now comes the grand jury into court, and present their bill of indictment against said defendant, which is ordered to be filed; and which said bill of indictment is in the words and figures following, to wit, of the September term of the Adams circuit court, in the year of our Lord 1842:

STATE OF ILLINOIS, *Adams county, ss:*

No. 1. The grand jurors chosen, selected, and sworn in and for the county of Adams, in the name and by the authority of the People of the State of Illinois, upon their oaths present, that Richard Eells, late of the county of Adams aforesaid, and State of Illinois aforesaid, on the twenty-second day of August, in the year of our Lord one thousand eight hundred and forty-two, at, and within the county of Adams aforesaid, a certain negro, the same negro being a slave, of the State of Missouri, and owing service to one Chauncy Durkee, of the said State of Missouri, then and there, in said county of Adams, unlawfully did secrete, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

No. 2. And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Richard Eells, late as aforesaid, afterwards, to wit, on the day and year aforesaid, at and within the county of Adams aforesaid, a certain other negro slave, owing labor to one Chauncy Durkee, of the State of Missouri, and being the property of him the said Chauncy Durkee, then and there, in said county, did harbor, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

No. 3. And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Richard Eells, late as aforesaid, afterwards, to wit, on the day and year aforesaid, at and within the county of Adams aforesaid, a certain other negro slave, owing labor, in the State of Missouri, to one Chauncy Durkee, of said State of Missouri, and having secretly fled from said State, and from the said Chauncy Durkee, his master, then and there unlawfully did secrete, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

No. 4. And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Richard Eells, late as aforesaid, afterwards, to wit, on the day and year aforesaid, at and within the county of Adams aforesaid, a certain other negro slave then and there unlawfully did secrete, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

No. 5. And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said Richard Eells, late as aforesaid, afterwards, to wit, on the day and year aforesaid, at and within the county of Adams aforesaid, a certain other negro slave, of and from the State of Missouri, and having fled from the custody of one Chauncy Durkee, and owing service to the said Chauncy Durkee, of said State of Missouri, the said Chauncy Durkee, then and there being the lawful owner of said negro slave, then and there in said county of Adams, unlawfully did prevent the said Chauncy Durkee, being the lawful owner of said slave as aforesaid, from retaking him, the said negro slave, in a lawful

manner, by secreting him, the said negro slave, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

WM. ELLIOTT, Jr., *State's att'y.*

Upon the back of which indictment is the following endorsements, to wit:

People vs. Eells.—Secreting slave.

A true bill.

JOHN BROWN,
Foreman of the grand jury.

Witnesses: Chauncy Durkee, Henry J. Durkee, Thomas Jasper, Samuel Woolfolk, William L. King, Alanson Platt, Ebenezer Hill, John Shead, Samuel Pearson, David Phelps, William Skinner, William Uaham, Cornelius Connelly, John Webb.

Filed September 21, 1842.

And afterwards, to wit, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and forty-two, an order is entered upon the records of said circuit court, in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, plaintiffs, vs. RICHARD EELLS, defendant. } Indictment for secreting slave.

Now come the said People by William Elliott, jr., esq., and the said defendant by his attorneys; and the said defendant enters his motion to quash the indictments herein. And this cause coming on to be heard upon said motion to quash, and the court being now sufficiently advised in the premises, it appears to the court here that said motion to quash ought to be sustained as to the fourth count of said indictment, and overruled as to the first, second, third, and fifth counts. Therefore it is considered that the fourth count of said indictment be quashed.

Whereupon, the said defendant is furnished with a copy of the indictment, a list of the witnesses, whose names are endorsed on the back thereof, and a list of the petit jurors in attendance upon the present term of this court. And now the said defendant being brought to the bar of the court, and being forthwith demanded, concerning the premises, how he will acquit himself of the charges in the indictment above specified, and charged upon him for plea, saith he is not guilty.

And afterwards, to wit, on the twenty-eighth day of September, in the year of our Lord one thousand eight hundred and forty-two, an order is entered upon the records of said circuit court, in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, plaintiffs, vs. RICHARD EELLS, defendant. } Indictment for secreting slave.

Now come the said parties herein by their respective attorneys, and on affidavits filed, and on motion of the said defendant, it is order-

ed that this cause stand continued until the next term of this court. And it is further ordered that the recognizances of witnesses in this cause stand continued as aforesaid.

And afterwards, to wit, on the twenty-first day of April, in the year of our Lord one thousand eight hundred and forty-three, the following orders are entered upon the records of said court, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, plaintiffs, vs. RICHARD EELLS, defendant. } Indictment for harboring and secreting a runaway slave.

Now come the said People by William Elliott, jr., esq., State's attorney; and the said defendant in his proper person, and attended by counsel; and also to try the issue joined come the jurors of a jury, to wit, Arthur Emery, Ebenezer Chaplin, E. S. Beardsley, John Abby, Hezekiah Butler, J. W. Casady, Joseph Beck, Shepherd Cox, George Brown, C. E. Betts, Isaac Cleavland; whereupon the pannel being exhausted, the sheriff is ordered to summon one from among the bystanders; whereupon the said sheriff summoned Lewis Burk, a like good and lawful man, who gave his attendance accordingly; and the jurors aforesaid being duly elected, tried, and sworn to well and truly try the issue joined, retire to consider of their verdict.

And afterwards, to wit, on the twenty-second day of April, A. D. 1843, an order is entered upon the records of said circuit court in the words and figures following, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, plantiffs, vs. RICHARD EELLS, defendant. } Indictment for harboring and secreting a runaway slave.

Now come as well the parties herein, as also the jurors aforesaid, who upon their oaths do say: we the jury find the defendant guilty in manner and form as charged in the indictment.

Whereupon the said defendant, by his attorney, enters his motion for an arrest of judgment, for the reason that the statute law of Illinois under the 149th section of the criminal code, of which the indictment in this case is found, is invalid and of no force or effect, because Congress has legislated upon the same subject, and for other good and legal reasons.

And afterwards, to wit, on the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and forty-three, the following orders and judgment are entered upon the records of said circuit court, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, plaintiffs, vs. RICHARD EELLS, defendant. } Indictment for harboring and secreting a runaway slave.

And now this cause coming up to a hearing upon the motion entered herein for an arrest of judgment, whereupon the premises being seen,

and by the court fully understood, and mature deliberation being thereupon had, it appears to the court here that the motion entered herein for an arrest of judgment ought not to prevail. And the said defendant being brought to the bar of the court, and having nothing further to say why judgment should not be passed upon him, it is therefore considered by the court here that the said defendant, Richard Eells, do pay a fine to the People of the State of Illinois of four hundred dollars for the said offence. It is therefore considered, that the said People do recover against the said defendant, Richard Eells, the sum of four hundred dollars, the fine aforesaid, besides their costs about their prosecution in this behalf expended, and that they have execution therefor.

STATE OF ILLINOIS, *Adams county, sct:*

I, C. M. Woods, clerk of the circuit court within and for the said county, do hereby certify, the foregoing is a true and correct copy of the indictment and the orders, and judgment, as appears from the originals remaining on file in my office in the foregoing case.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court at my office in Quincy, this nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-three.

[Seal circuit court, Adams county Illinois.]

C. M. WOODS, *Clerk.*
Pr. JAMES M. BUSH, *Deputy Clerk.*

STATE OF ILLINOIS, *Adams county.*

Circuit court, April term, 1843.

I, James H. Ralston, do hereby certify that, upon the trial of the foregoing cause, I acted as an assistant prosecuting attorney in aid of the prosecuting attorney for said circuit, and afterwards during same term of court I was appointed States' attorney pro tem. I do further certify, that I have examined the foregoing exemplification of record, and that I believe the same to be true and correct.

Given under my hand this 3d day of July, 1843.

J. H. RALSTON.

After inspecting the foregoing record and examining the errors relied on for a reversal of the judgment, I am of opinion that there is reasonable cause for allowing a writ of error. The clerk of the Supreme Court will therefore issue a writ of error, together with a supersedeas of the execution, July 6th, 1843.

SAMUEL D. LOCKWOOD, *One, &c.*

In the circuit court of Adams county and State of Illinois.

THE PEOPLE OF THE STATE OF ILLINOIS,
vs.
RICHARD EELLS.

In the record and proceedings in the foregoing case, the court erred in the following particulars:

1st. In not sustaining the motion to quash the indictment

2d. In not sustaining the motion to arrest the judgment.

3d. It does not appear from the record, that an officer was sworn to retire with the jury when they retired to consider of their verdict, or that the summoning of such officer was named by the defendant.

J. QUINN THORNTON, *Attorn'y for defendant.*

SAME VS. SAME.

And now comes def'ts in error and say, that in the record and proceedings herein there is no such error as the pl'ff in error hath above alleged, and of this they are ready to verify; wherefore, &c.

McDOUGALL, *Att'y Gen'l.*

And afterwards, to wit, on the said fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three, the following writ of error was issued from the said Supreme Court, and filed with the said record, to wit:

STATE OF ILLINOIS, *sct.*

The People of the State of Illinois, to the clerk of the circuit court for the county of Adams, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Adams county, before the judge thereof, between the People of the State of Illinois, plaintiffs, and Richard Eells, defendant, it is said manifest error hath intervened to the injury of the aforesaid Richard Eells, as we are informed by his complaint; and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you, that if judgment thereof be given, you distinctly and openly, without delay, send to our justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid, at Springfield, in the county of Sangamon, on the second Monday in December next, that the record and proceedings being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness the hon. William Wilson, chief justice of our said court and the seal thereof, at Springfield, this fifteenth day of July, in [SEAL.] the year of our Lord one thousand eight hundred and forty-three.

E. PECK, *Clerk of the Supreme Court.*

On which writ of error are the following endorsements:

Supreme Court.

RICHARD EELLS, plaintiff in error,
vs.
THE PEOPLE, &c., defendant in error.

This writ of error is made a supersedeas, and is to be obeyed accordingly.

Filed, 15th July, 1843. E. PECK, *C. S. C.*

And afterwards, to wit, on the said fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three, the following certificate of supersedeas was issued from the said Supreme Court:

ILLINOIS, *ss.*

Clerk's office of the Supreme Court.

I hereby certify, that a writ of error hath issued from this office, for the reversal of a judgment obtained by the People of the State of Illinois against Richard Eells, in the circuit court of Adams county, at the April term, in the year of our Lord one thousand eight hundred and forty-three, in a certain criminal prosecution, for which writ of error is to operate as a supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, and seal of the said Supreme Court, at Springfield, this fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-three.

[SEAL.]

E. PECK,
Clerk of the Supreme Court.

And afterwards, to wit, on the thirteenth day of Nov., in the year of our Lord one thousand eight hundred and forty-three, the said certificate of supersedeas was filed in the office of the clerk of the said Supreme Court, with the return thereon, to wit:

STATE OF ILLINOIS, *Adams county, ss.*

Be it remembered, that on this ninth day of November, A. D. 1843, personally appeared before the undersigned clerk of the circuit court, within and for the county aforesaid, J. Quinn Thornton, who being duly sworn, according to law, deposeth and saith, that on or about the first day of August last, (the time not remembered,) he served the annexed writ of supersedeas on the sheriff of said Adams county, by reading the same to him, the said sheriff having at that time an execution in his hands against Richard Eells. And further saith not, &c.

J. QUINN THORNTON.

Subscribed and sworn to before me, this 9th of November, A D. 1843.

Witness, C. M. Woods, clerk of the circuit court of Adams, and the seal thereof, the date above written.

[SEAL.]

C. M. WOODS, *Clerk.*
By JAMES M. BURT, *Deputy.*

On which said writ of supersedeas are the following endorsements:

Supreme court, Richard Eells, plaintiff in error, *vs.* the People, &c., defendants in error—writ of supersedeas filed 18th Nov., 1843.

E. PECK.

At a supreme court, began and held at Springfield, on Monday, the eleventh day of December, in the year of our Lord one thousand eight hundred and forty-three, to wit, on Tuesday, the 26th day of December, A. D. 1843, of the December term, A. D. 1843, of said supreme court, the following order was entered of record on the records of said court:

Present, the honorable William Wilson, chief justice, Thomas C.

Browne, Samuel D. Lockwood, Samuel H. Treat, Richard M. Young, John Dean Caton, James Shields, Jesse B. Thomas.

RICHARD EELLS
vs.
THE PEOPLE, &c.

On this day came again the said parties, and the errors herein being joined, this cause was argued to the court by Dixon, on the part of the said plaintiff.

And afterwards, to wit, on Tuesday, the 26th day of December, A. D. 1843, of the December term, A. D. 1843, of the said supreme court, the following order was entered of record, on the records of said court:

Present, the honorable William Wilson, chief justice, Thomas C. Browne, Samuel D. Lockwood, Samuel H. Treat, Richard M. Young, John Dean Caton, James Shields, Jesse B. Thomas.

RICHARD EELLS
vs.
THE PEOPLE.

The argument of this cause was continued by Dixon, on the part of the plaintiff.

And afterwards, to wit, on Wednesday, the 27th day of Dec., A. D. 1843, of the Dec. term, A. D. 1843, of the said supreme court, the following order was entered of record on the records of said court:

Present, the honorable William Wilson, chief justice, Thomas C. Browne, Samuel D. Lockwood, Samuel H. Treat, Richard M. Young, John D. Caton, James Shields, Jesse B. Thomas.

RICHARD EELLS
vs.
THE PEOPLE.

The argument of this cause was continued by the Attorney General, on the part of the defendants.

And afterwards, to wit, on Wednesday, the 27th day of Dec., A. D. 1843, of the Dec. term, A. D. 1843, of the said supreme court, the following order was entered of record on the records of said court:

Present, the honorable William Wilson, chief Justice, Thomas C. Browne, Samuel D. Lockwood, Walter B. Scates, Samuel H. Treat, Richard M. Young, John D. Caton, James Shields, Jesse B. Thomas.

RICHARD EELLS
vs.
THE PEOPLE.

The argument of this cause was concluded by James H. Collins, on the part of the plaintiff, and the cause was submitted to the court, and the court not being sufficiently advised, took time to consider.

And afterwards, to wit, on Saturday, the tenth day of February, A. D. 1844, of the December term, A. D. 1843, of the said supreme court, the following order was entered of record on the records of said court:

Present, honorable William Wilson, chief justice, Samuel D. Lockwood, Walter B. Scates, Samuel H. Treat, Richard M. Young, James Shields, Jesse B. Thomas.

RICHARD EELLS
vs.
THE PEOPLE of the State of Illinois. } Error to Adams.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there any thing erroneous, vicious, or defective, and that the record is no error; therefore it is considered by the court, that the judgment aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court, that the said defendants in error recover of and from the said plaintiff in error their costs by them in this behalf expended, and that they have execution therefor.

Opinion of the court by Mr. Justice Shields.

The plaintiff in error was indicted in the circuit court of Adams county for harboring and secreting a negro slave; the indictment contains several counts.

The 1st count charges, that Richard Eells, on &c., at &c., a certain negro, the same being a slave of the State of Missouri, and owing service to one Chauncey Durkee, of said State of Missouri, then and there in said county of Adams, unlawfully did secrete," &c.

The 2nd count charges, "that said Eells, on &c., at &c., a certain negro slave, owing service to one Chauncey Durkee, and being the property of the said Chauncey Durkee, then and there did harbor, &c."

The 3rd count charges, "that the said Eells, on &c., at &c., a certain other negro slave, owing labor in the State of Missouri, and having secretly fled from such State, and from the said Chauncey Durkee, his master, then and there unlawfully did secrete, &c."

The 4th count charges, "that the said Eells did unlawfully secrete a negro slave, &c."

The 5th count charges, "that the said Eells, on &c., at &c., a certain other negro slave, of and from the State of Missouri, and having fled from the custody of one Chauncey Durkee, and owing service to the said Chauncey Durkee, of said State of Missouri, the said Chauncey Durkee then and there being the lawful owner of the said negro slave, then and there in the said county of Adams, unlawfully did prevent the said Chauncey Durkee, being the lawful owner of said slave as aforesaid, from retaking him the said slave, in a lawful manner, by secreting him the said negro slave, contrary to the form of the statute in such case made and provided, &c."

A motion was made by the defendant below to quash this indictment. The court sustained the motion as to the 4th count, and overruled it as to the others. The defendant then pleaded not guilty. A trial was had, and a verdict of guilty returned by the jury. The defendant entered his motion in arrest of judgment. The court overruled the motion, and rendered judgment against him, and assessed his fine at the sum of four hundred dollars. To reverse this judgment, the defendant prosecuted his writ of error to this court, and assigns for error the judgment of the court—

1st. In not sustaining the motion to quash the indictment.

2nd. In not sustaining the motion in arrest of judgment.

In reviewing the decision of the court below upon their motions, the objections made to the form of the indictment will be first considered. The first objection which appeared in the record is the omission to insert the name of the slave in the indictment. He is described as a "certain negro slave" the property of one Chauncey Durkee, a resident of Missouri. And it is objected that this description is not sufficient. This omission does not affect in any degree the rights of the defendant. Upon a second trial for the same offence, he can give parol proof of the identity of the slave, and this proof would be equally necessary in such case if the name of the slave were inserted in the indictment. The description would be held sufficient in an indictment for larceny, and it is therefore sufficient in an indictment like the present.

The next objection is also a formal one, and is founded upon the want of an allegation of the scienter in the indictment. It is said that the defendant to be guilty of the offence must have knowledge of the fact that the person harbored or secreted was at the time a slave and the property of another, and that this knowledge must be averred in the indictment, and proved on the trial. The case of Birney vs. the State of Ohio, 8 Ohio Rep. 238, is cited in support of this position. The court in that case says, that "this knowledge should have been averred in the indictment and proved on the trial; for without such knowledge, the act charged as a crime was innocent in its character." This reasoning is based on the supposition, that knowledge of the fact that the negro is a slave, and the property of another, constitutes the essence of the offence. This supposition is incorrect. The mere knowledge of this fact is not the essence of the offence. It may be an act of humanity in many cases to afford shelter and succor to a slave while knowing him to be a slave, and the property of another. The essence of the offence consists in the attempt to defraud the owner of his property, and the words *harbor* and *secrete* have by long usage, in connection with the subject, acquired a specific meaning which includes both act and intention. This court has taken this view of the signification of these words, in the case of Chalmers vs. The People, decided at the present term.

This obvious signification of these words was wholly overlooked by the supreme court of Ohio in the case referred to, and the decision is

therefore of little authority in any court which desires to apply the principles of construction recognised by the usage of those courts which are accustomed to legislate upon the subject. This indictment is besides in the exact language of the statute; and our laws expressly provide that every indictment shall be considered sufficiently technical and correct, which states the offence in the terms and language of the code, or so plainly that the nature of the offence may be easily understood by the jury. The objections, therefore, to the form of the indictment are not tenable.

The next objection is of a more serious nature. It is insisted that the law upon which this indictment was founded is void, being in conflict with the third paragraph of the 2d section of the 4th article of the Federal Constitution, which declares "that no person held to service or labor in one State under the laws thereof, escaping into another, shall in consequence of any law or regulation therein be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

This prohibits the States from passing any law which may interfere with the right of the master to the service of his fugitive slave. Such a law would be absolutely void. The right of the master to his slave is as perfect in the State in which the fugitive is found, as in the State from which he has fled. He can seize and recapture him, if the same can be done without a breach of the peace. In the case of Prigg vs. the Commonwealth of Pennsylvania, Judge Story, who delivered the opinion of the majority of the court, says, "upon this ground we have not the slightest hesitation in holding that, under and in virtue of the Constitution, the owner of a slave is clothed with entire authority, in every State of the Union, to seize and recapture his slave, whenever he can do it without any breach of the peace or any illegal violence." If the owner cannot recover his slave by recapture, he must resort to his legal claim or demand, and on such claim the slave is to be "delivered up." Judge Story in the same case says, "they (the owners) require the aid of legislation to protect their right, to enforce the delivery and to secure the subsequent possession of the slave. If indeed the Constitution guarantees the right, and if it requires the delivery upon the claim of the owner, (as cannot be doubted,) the natural inference certainly is, that the National Government is clothed with the appropriate authority and functions to enforce it. The National Government has exercised this authority, and by virtue of an act of Congress of the 12th of February, 1793, a uniform remedy, which is perhaps ample and sufficient for the present, is afforded to all claimants of fugitive slaves throughout the Union. Previous to the passage of that law, the fugitive was "to be given up" on the claim of the owner, and it was incumbent on the State to see the claim enforced by its own legislation and its own officers. This duty, it is true, might be neglected by the State. It might disregard its obligations to its sister States; it might refuse to enforce a right which it had recognised, and the National Government could not compel it to act in the premises; but the moral and political obligation

of the State to legislate for the enforcement of this right, would be as strong and binding as its obligation to legislate in favor of any other right. Judge Story, in the case already alluded to, thinks that the power of legislation on the subject is exclusive in Congress. I think his reasoning on this point not entirely conclusive. He says "whenever the right was acknowledged and the duty enforced in any State it was a matter of comity and favor, and not as a matter of strict moral, political, or international obligation or duty." The right was secured by the national compact. This compact was obligatory upon all the States, and I think it was much more than "a matter of comity and favor;" that it was a matter of strict moral, political, and international obligation and duty, which rested upon each State to enforce the right. Chief Justice Taney, who concurred with Judge Story in the decision of the case already referred to, delivered a separate opinion, and his view of this matter seems to be more consonant with that nice and delicate principle which must be applied to the adjustment of the boundaries of jurisdiction between the State and Federal Governments. He says "the words of the article direct that the fugitive 'shall be delivered up,' seem evidently designed to impose it as a duty upon the people of the several States to pass laws to carry into execution, in good faith, the compact into which they thus solemnly entered with each other. The Constitution of the United States, and every article and clause in it, is a part of the law of every State in the Union, and is the paramount law. The right of the master, therefore, to seize his fugitive slave, is the law of each State, and no State has the power to abrogate or alter it; and why may not a State protect a right of property acknowledged by its own paramount law?" In this reasoning I heartily concur. The duty of the State to legislate upon the subject, in the absence of all national legislation, did not make it necessary, by any means, for the National Government "to rely for the due fulfilment of its own proper duties, and the rights which it intended to secure, upon State legislation and not upon that of the Union." In 1793, Congress legislated upon this subject, and it is contended that this national legislation supersedes all State legislation upon the same subject. On this Judge Story says: "If this be so, then it would seem, upon just principles of construction, that the legislation of Congress, if constitutional, must supersede all State legislation upon the same subject, and by necessary implication prohibit it; for if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the State legislatures have a right to interfere, and, as it were, by way of compliment to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose." If the meaning of this is, that the States are prohibited from passing any law repugnant to the provisions of the act of Congress, or interfering in any way with the remedy given by that act for the recovery of fugitive slaves, I think it reconcileable with a just apprehension of the legitimate powers of State governments; but if it is intended to mean that a State has no right to legislate on the subject matter of fugitive slaves, merely because Congress has already legislated on the

same subject, then I am compelled to regard all this reasoning as the mere *obitu dicta* of a judge, and that, too, on a point *on* not properly involved in the case before the court at the time. But the question for the immediate consideration of this court [is], whether the 149th section of the criminal code of this State is in conflict with that portion of the article in the Federal Constitution, already alluded to, in relation to fugitive slaves. This section in the criminal code declares that, "if any person shall harbor or secrete any negro, mulatto, or person of color, the same being a slave or servant owing service or labor to any other persons, whether they reside in this State or any other State or territory, or district, within the limits and under the jurisdiction of the United States, or shall in any wise hinder or prevent the lawful owner or owners of such slaves or servants from retaking them in a lawful manner; every such person so offending shall be deemed guilty of a misdemeanor, and fined not exceeding five hundred dollars, or imprisoned not exceeding six months." This law does not tend either directly or indirectly to discharge the slave from any service or labor due to the owner, neither does it interfere either directly or indirectly with the rights of the master. It is therefore free from any objection to its constitutionality in this respect. It does not interfere either with the remedy given by Congress for the recovery of the slave, or with the mode of prosecuting that remedy. It neither aids or impedes the owner in the reclamation of his property. It neither acts upon the master or the slave, the right or the remedy. It merely acts upon the citizens of our own State. It does not even "by way of compliment to the legislation of Congress," prescribe additional regulations or auxiliary provisions for the recovery of the slave; and it must be by a very strained construction, a construction which would lead to the utter annihilation of State sovereignty, that such a law can be supposed to be unconstitutional. This law prescribes a rule of conduct for our own citizens. If the State can do this, and I hardly think the power questionable, it can punish those who violate the rule. If a State has power to regulate its own affairs, it has the power to define offences and punish offenders. The object which the legislature may have had in view in passing the law is not a necessary subject of enquiry before this court; it may have been enacted with the intention of deterring our citizens from interfering with the rights of the master to his property in slaves; if so, the object was a legitimate one, and wisely intended to check unwarrantable interference with rights which are guaranteed by the sacred compact which holds us together as a nation. It may have been, and most likely was, to prevent the influx of an unacceptable population; but it matters not what the object was, the exercise of the power was within the legitimate scope of State authority, and the necessity for its exercise cannot be enquired into in a court of justice. Judge Story, in the opinion so often alluded to, while asserting for Congress the exclusive power to legislate in relation to fugitive slaves, fully recognises the power of the States to legislate in all cases similar to the one now under consideration; "to guard however, (he says,) against any possible misconception of our views, it is proper to state, that we

are by no means to be understood in any manner whatsoever, to doubt or to interfere with the police power belonging to the States in virtue of their general sovereignty. That police power extends over all subjects within the territorial limits of the States, and has never been conceded to the United States; it is wholly distinguishable from the right and duty secured by the provision now under consideration, which is exclusively derived from and secured by the Constitution of the United States, and owes its whole efficacy thereto. We entertain no doubt whatsoever that the States, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as they certainly may do in case of idlers, vagabonds, and paupers. The rights of the owners of fugitive slaves are in no just sense interfered with, or regulated by such a course; and in many cases the operation of this police power, although designed essentially for other purposes, for the protection, safety, and peace of the State, may essentially promote and aid the interests of the owners; but such regulations can never be permitted to interfere with, or to obstruct the just rights of the owner to reclaim his slave derived from the Constitution of the United States, or with the remedies prescribed by Congress to aid and enforce the same. This qualificatory language of that learned judge, covers the case before the court. This power is one of internal police regulation, and that power, as Judge Story says, "extends over all subjects within the territorial limits of the States." The police power of a State embraces the power of regulating the whole internal affairs of a State, and its civil and criminal policy. In the case of the City of New York vs. Miln, 11 Peters, 142, Judge Barber, who delivered the opinion of the court, says, "we think it as competent and necessary for a State to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease." If a State can use precautionary measures against the introduction of paupers, convicts, or negro slaves, it can undoubtedly punish those of its citizens who endeavor to introduce them. This is the power which the State of Illinois has exercised in the enactment of the law under consideration. It is also said, that this law may punish a man twice for the same offence; there is no force whatever in this objection; the offences are separate and distinct, violations of distinct and different laws, and the punishment inflicted by different sovereignties. It is the opinion of the court, that the objections taken to this indictment, and the law upon which it is founded, are not tenable.

The judgment below is therefore affirmed with costs.

Dissenting opinion of Mr. Justice Lockwood.

I do not concur in the opinion just delivered in this case. It is declared by the 1st section of the 6th article of the constitution of this State, that "neither slavery nor involuntary servitude shall hereafter be intro-

duced into this State, otherwise than for the punishment of crimes whereof the party shall have been duly convicted;" and by the 1st section of the 8th article it is further declared, "that all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, and of acquiring, possessing, and protecting property and reputation, and of pursuing their own happiness.

From these provisions of the constitution I deduce the following general rule, that all men, whether black or white, are in this State presumed to be free, and that every person who claims another to be his slave under any exception or limitation of the general rule, must clearly show that the person so claimed comes within such exception. The following cases will, it is thought, fully sustain this rule, to wit, Butler vs. Stapper, 1st Washington C. C. Repts. 499; *ex parte* Simmons, 4 Wash. C. C. Rep. 269; Commonwealth vs. Holloway, 2 Ser. & Rawl, 305; Luxford vs. Cognilla, 14 Martin's Louisiana Repts. 465; Commonwealth vs. Nois, 18 Pickering Rep. 224; Kinney vs. Coot, 3 Scammon, 233; Bailey vs. Cornwell et al., 3 Scammon, 73. The same rule of construction is adopted in analogous cases in other countries, "that is where an institution is forbidden, but when, for special reasons and to a limited extent, such prohibition is relaxed, the exemption is to be construed strictly, and whoever claims the exemption must show himself clearly within it; and when the facts do not bring the case within the exemption, the general rule has its effect, Com. vs. Avis, 18th Pick. 224. Mr. Justice Story, in delivering the opinion of the Supreme Court of the United States in the case of Prigg vs. Commonwealth of Pennsylvania, 16th Peters, 611, sanctions the same principle; he says, "By the general law of nations no nation is bound to recognize the state of slavery as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favor of the subjects of other nations where slavery is recognized. If it does, it is as a matter of comity, and not as a matter of international right. The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws."

I am also of opinion that in an indictment for harboring or secreting a slave, the indictment should aver that the accused had a knowledge of the fact that the person secreted or harbored was a slave. I consider the case of Birney vs. The State of Ohio, 8th Ohio Rep. 230, as laying down the correct rule on this subject. From the grounds of the decision in the case in Ohio above cited, I refer to the dissenting opinion I delivered at this term in the case of Chambers vs. The People. The decision in Ohio was pronounced by a highly respectable court, and in a State whose general policy is similar to ours, and on a statute almost identically the same. What good reason can be given for departing from the construction of a similar statute in another State, and when it must be conceded that in so doing we violate a long and well settled rule of both civil and criminal pleading, I am at a loss to conceive. Can this court know but that the court below were governed by the princi-

ple that the offence was committed, whether Eells knew that the person harbored was a slave or not? and would not the jury have been justified in coming to such a conclusion, if the indictment was good?

I am also clearly of the opinion that the power of legislation on the subject of fugitive slaves is vested exclusively in Congress, and that no State can pass any law to superadd, to control, qualify, or impede the remedy given by Congress. If it was intended by the legislature, by the 149th sec. of our criminal code, to punish under its provisions the harboring or secreting a fugitive slave, then I hold that the said section would be unconstitutional and void. I further hold that this section, when used for this purpose, cannot be considered as a *police regulation*. To sustain these positions I rely on the cases of Prigg vs. Pennsylvania, 16th Peters, 622, and the case of Jack, 12th Wendell. Justice Story, in his luminous opinion, delivered as the opinion of the majority of the court in the case in 16 Peters, says, "that if this be so (that the legislation of Congress upon the subject of fugitives from justice and labor covers the whole ground) then it would seem, upon just principles of construction, that the legislation of Congress, if constitutional, must supercede all State legislation upon the same subject, and by necessary implication prohibit it," page 617. He also says, "In such a case the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be further legislation to act on the subject matter." Judge Story argues, "If, indeed, the Constitution guarantees the right, and if it requires the delivery upon the claim of the owner, (as cannot well be doubted,) the natural inference certainly is, that the National Government is clothed with the appropriate functions to enforce it." He further says, that "the fundamental principle applicable to all cases of this sort would seem to be, that where the end is required the means are given, and where the duty is enjoined the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted." In page 622 the same judge says, "the remaining question is, whether the power of legislation is exclusive in the National Legislature, or concurrent in the States until it is exercised by Congress. In our opinion it is exclusive, and we shall proceed briefly to state the reasons for that opinion." Justice Wayne concurred in the opinion of the court as it had been given by Justice Story. He also gives in his opinion a summary under seven heads of what that opinion contains. Under the third head he states, "that no State can pass a law to superadd, to control, qualify or impede a remedy given by Congress." Under the 4th head he says, "that the power of legislation by Congress is exclusive, and that no State can pass any law, as a remedy upon the subject, whether Congress had or had not legislated." Chief Justice Taney held "that the owner of a fugitive slave may peaceably seize him and take him away without a certificate from any officer, and every one that resists or obstructs him is a wrong-doer; and every law, either of Congress or of a State, that restricts such right, is void." He admits the act of Congress in aid of the owner is constitutional, and contends that the States may pass laws in aid of the master; he however insisst

that the laws of the different States cannot be supported on the ground that they are police laws. Internal police laws, he contends, are based upon the right to remove from the territory of the State disorderly and evil disposed persons, or those who from the nature of her institutions are dangerous to her peace and tranquility." He says, "it would be difficult, perhaps, to bring all the laws I have mentioned within the legitimate scope of the internal powers of police." Chief Justice Taney also understands the opinion of the court to be, "that due power to provide a remedy for this right is vested exclusively in Congress, and that all laws upon the subject passed by a State are *null and void*, even although they were passed in good faith to protect the owner in the exercise of his rights of property, and do not conflict in any degree with the act of Congress." Justice Daniel was of opinion that the power to legislate was concurrent. He was however of opinion that laws made in aid of the master were not *police regulations*. From a careful examination of this interesting case I have arrived at the conclusion, that six of the judges of the Supreme Court of the U. States were of the opinion that the power to legislate on the subject of fugitive slaves was vested *exclusively* in Congress, and that even in the opinion of the dissenting judges our statute could not be considered a *police regulation*. I am however of the opinion that the legislature of this State never intended to embrace the case of fugitive slaves within the provisions of the 149 section of the criminal code. To render this position clear, it is only necessary to look into the history of our legislation on this subject. The legislature, at their session in 1822–'3, passed a resolution requiring the Secretary of State to publish, with the laws passed at that session, a copy of the act of Congress in relation to fugitives from justice and labor, and this was accordingly done. The legislature doubtless, in requiring this law to be published among the statutes of the State, did it that the people might be fully apprised of the penalties to which they would be exposed if they violated its provisions, and it cannot be supposed that the legislature would pass another law to punish with great severity the same offence. To punish criminally for the same offence more than once is a violation of a great fundamental principle, and such an intention ought not to be imputed to the legislature, if any other sensible construction can be given to the statute.

If by the 149th section of the criminal code the legislature did not intend to punish the harboring and secreting of fugitive slaves, it may be asked to what description of cases did they intend to apply its provisions, where interference took place with the rights of non-resident owners of slaves?

For a true solution of this inquiry recurrence must be had to the situation of the State at and before the passage of the act. Illinois lies between Missouri and Kentucky. Emigrants and travellers, from Kentucky and other slave-holding States, had for years, and were then, passing through Illinois to Missouri by thousands, and were accompanied by numerous slaves. The right thus to travel through the State was by common consent, in other words by *comity*, universally conceded to the

citizens of those States. To prevent persons who from ignorance of the law, or from sinister designs, might feel disposed to interfere with the rights of masters thus situated, this section of the criminal code, it is reasonable to be presumed, was passed. To this extent I have no doubt the legislature intended to extend the protection of our law. But I can by no means yield my assent to the proposition that the legislature intended to punish an offence already amply punished under the act of Congress; and if they did, then I am clearly of opinion that their act was void as being an attempt to legislate on a subject *exclusively* within the jurisdiction of Congress.

To construe this section as being a mere police regulation contradicts all my views of such regulations. I never heard our criminal code before designated as police regulations. I had supposed that police regulations related to laws regulating taverns, excises, vagrants and paupers, and not to matters of such high concernment as the criminal code of the State.

To apply these principles to the indictment now under consideration, I am of the opinion that the first count is defective, because it contains no allegation of a *scienter*, and because it does not show how the slave came into the State of Illinois. The person being in this State, and by our laws presumed to be free, the question arises, what takes him out of the operation of this rule? Did he escape from Missouri? Then he is a fugitive from labor, and the secreting him is an offence against the act of Congress. Did his master bring him here, and hire him out? Then he became free. As this count is uncertain in this respect, there being no allegation in the indictment showing in what manner the slave came into the State, so as to prevent his becoming free under the general rule. For this uncertainty, as well as for want of the averment of a *scientre*, I consider the first count defective. The second count is also bad on both of the above grounds.

The 3d count is bad for the reason of the absence of an averment of a *scientre*, and also for the further reason that it states the slave to have been a fugitive from labor, and consequently the defendant was punishable under the act of Congress.

The fourth count was quashed in the court below, and the opinion of this court upon that count is therefore not called for. The fifth and last count is defective for the same reasons which are assigned against the soundness of the third count.

To prevent the indictment in this case from being drawn into a precedent, I deem it my duty to state that I consider it defective, because the name of the slave no where appears. In indictments of this description I think it is necessary to give the name of the slave, to apprise the defendant of the particular slave he is charged with having secreted, and also in case of a second indictment to enable him to plead the former trial without compelling him to resort to parol proof to show that the last indictment related to the secreting of the same slave; although this defect in the indictment is not assigned for error, I am of opinion that the court, *ex mere motu*, should reverse the judgment below for this reason.

Chief Justice Wilson and Justice Browne concur in the opinion of Justice Lockwood.

I, Ebenezer Peck, clerk of the supreme court of the State of Illinois, do hereby certify, that the foregoing pages contain a true and correct copy of the record of the circuit court of Adams county, filed in the clerk's office of the said supreme court, and of all the proceedings had thereon in the said supreme court.

In testimony whereof I have hereunto set my name and affixed the seal of the said supreme court, at Springfield, this eighteenth [L. S.] day of November, in the year of our Lord one thousand eight hundred and forty-four.

E. PECK, *C. S. C.*

Filed 4th Sept., 1845.

SUPREME COURT OF THE UNITED STATES.

No. 191.

JOHN HAGAN, SURVIVING PARTNER OF THE LATE FIRM OF JOHN HAGAN & CO., APPELLANTS,

vs.

WM. H. POPE AND SAMUEL BRECK, ADMINISTRATORS OF LEROY POPE, DECEASED.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

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THE UNITED STATES OF AMERICA:

Pleas had at a term of the district court of the United States of America, for the northern district of Alabama, begun and held at the court-house, in the town of Huntsville, in said northern district, on the third Monday (being the twentieth day) of May, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the said United States the seventieth year.

Present, the honorable William Crawford, judge of said district court.

JOHN HAGAN & CO.
vs.
SAMUEL BRECK, admr., &c., of Leroy Pope, deceased, William H. Pope, and Charles B. Penrose.

In chancery.

Be it remembered, that heretofore, to wit, on the fifteenth day of February, in the year of our Lord one thousand eight hundred and forty-six, was filed in the office of the clerk of the district court of the United States of America, for the northern district of Albama, at Huntsville, in said district, an original bill, on the chancery side of said district court, in the names of John Hagan, of New Orleans, and a citizen of the State of Louisiana, and Thomas Barrett, of New Orleans, and a citizen of the State of Louisiana, formerly commission merchants and partners, trading under the firm name and style of John Hagan & Co., complainants, against William H. Pope, of Huntsville, and a citizen of the State of Alabama, Samuel Breck, of Huntsville, and a citizen of the State of Alabama, the said Breck being the administrator of the estate of Leroy Pope, who in his lifetime resided in Huntsville, and was a citizen of the State of Alabama, and Charles B. Penrose, of Washington city, and a citizen of the District of Columbia, and successor in office of Virgil Maxey, who in his lifetime resided in Washington city, and was a citizen of the District of Columbia, and Solicitor of the Treasury of the United States, defendants, in the words and figures following, to wit:

Bill.

To the honorable William Crawford, judge of the district court of the United States, for the northern district of Alabama:

John Hagan, of New Orleans, and a citizen of the State of Louisiana, and Thomas Barrett, of New Orleans, and a citizen of the State of Louisiana, formerly commission merchants and partners, trading under the firm and style of John Hagan & Co., bring this their bill

against William H. Pope, of Huntsville, and a citizen of the State of Alabama, and Samuel Breck, of Huntsville, and a citizen of the State of Alabama, the said Breck being the administrator of the estate of Leroy Pope, who in his lifetime resided in Huntsville, and was a citizen of the State of Alabama, and Charles B. Penrose, of Washington city, and a citizen of the District of Columbia, and successor in office of Virgil Maxcy, who in his lifetime resided in Washington city, and was a citizen of the District of Columbia, and Solicitor of the Treasury of the United States, and thereupon your orators complain, and say:

That on the 18th of April, in the year 1834, at the April term of the district court of the United States for the northern district of Alabama, held at Huntsville, in said district, and before your honor, as presiding judge of said court, they recovered a judgment at law, in their partnership name as aforesaid, against Leroy Pope, for the sum of seven thousand two hundred and eighty-three dollars and forty-nine cents, debt, and seven hundred and eighty-two dollars and ninety-nine cents, damage, and twenty-four dollars and thirty-three and one-third cents, costs of suit, which said judgment remains unrecovered and in full force, and wholly unsatisfied and unpaid; that on or about the 20th of May, 1834, your orators caused a writ of fieri facias to be issued regularly upon said judgment, against the goods and chattels, lands and tenements, of the said Leroy Pope, which said writ was duly delivered to the marshal of the said northern district of Alabama to be executed, and the same remained in his hands until the 10th of October, 1834, when the said marshal returned the same to the said court, endorsed as follows, "No property of the defendant found in my district, to make this debt, or any part;" and that, from that time to the present, there has not, within the said district or any where else, been any property of any description belonging to the said Leroy Pope, out of which said debt could be collected, by execution or otherwise, except as is hereinafter stated.

Your orators further complain, and say, that the said Leroy Pope, in his lifetime, was justly indebted to the United States in a large sum of money, viz., the sum of thirty-eight thousand one hundred and thirty-three dollars and twenty-two cents, with interest on the same at the rate of six per centum per annum, from the 20th of July, 1831, which said indebtedness was secured to the United States by a deed of trust to Louis McLane, Secretary of the Treasury of the United States, for the benefit of the United States, of certain property therein described, which said deed bears date on the 18th of October, 1831, and is duly recorded in the clerk's office of the county court of Madison county, as aforesaid, to which said registration your orators beg leave to refer, if necessary, as part of their bill, the said deed of trust not being in the possession of your orators; that, if any payments were made by the said Leroy Pope to the United States, or to any person for their benefit, between the date of said deed of trust and the 22d of March, 1834, the fact is unknown to your orators; that in the month of March, 1834, the resources of said Pope, and his means of paying the said debts to the United States, consisted of certain lands, negroes, and the personal property and promis-

sory notes, amounting in value, at that time, to the sum of one hundred and fifty thousand dollars; all of which will hereinafter be more fully described and set forth.

Your orators further complain and say, that on the 22d day of March, 1834, not one month before the date of your orators' judgment against the said Leroy Pope, as before set forth, the said Leroy Pope and the aforesaid William H. Pope, in the northern district aforesaid, both well knowing the existence and the justice of the debt due to your orators and then in suit, and contriving and intending to hinder, delay, and defraud your orators in the collection of their said debt, made an agreement that, to carry into effect their fraudulent intent, the said Leroy Pope should convey to the said William H. Pope, his son, then living with his father, the said Leroy Pope, and engaged in no active and lucrative employment, and as your orators are advised and believe, and so expressly charge, without any means or resources of his own, but dependent almost entirely upon the bounty of his father, his *whole* whole property both real and personal, and of the great value aforesaid; and pursuant to said fraudulent agreement, the said Leroy Pope, by his deed of bargain and sale, bearing date the day and year last aforesaid, and purporting to be founded on a consideration of fifteen thousand dollars, conveyed to the said William H. Pope the tracts of land, and town lots following the said tracts of land, lying and being in the county of Madison and in the northern district aforesaid, and the said town lots lying and being in the town of Huntsville, in the said northern district of Alabama, viz., the northeast quarter of section No. 6, township 4, range 1, east of the basis meridian of said county; also the southeast quarter of section 31, township 3, range 1, east of said meridian; also the southwest quarter of sec. 31, township 3, range 1, east of said meridian; also the northwest quarter of section 6, township 4, range 1, east of said meridian; also all that part of the southeast quarter of section 36 whereon the said Leroy Pope, at the date of said [deed] lived, which the said Leroy had not, at the time of the execution of said deed, conveyed away by deed in fee simple. This last mentioned quarter section lies in township 3, range 1, west of said meridian. Also all that part of the northeast quarter of section 1, township 4, range 1, west of said meridian, which the said Leroy Pope had not, prior to the execution of his said deed to said William H. Pope, conveyed by deed, or given his bond to convey by deed; also all small lots of land, of every description, lying within the town of Huntsville aforesaid, which the said Leroy Pope had not conveyed away by deed prior to the execution of his said deed to said William H. Pope; also all the spring of said town of Huntsville, and the vacant land attached to said spring and around it—of the quantity, numbers, and boundaries of which, as well as the quantities and boundaries of the two last mentioned tracts of land, which the said Leroy had conveyed away, or given his bond to convey, prior to his execution of his said deed to said William H. Pope; and also of the town lots not conveyed, as aforesaid, your orators are ignorant; also, by the said deed to the said William, the said Leroy conveyed a house and lot, lying in the county of Madison and northern

district aforesaid, south of the Dry fork of Indian creek, on the west side of the road leading to Dalto's landing on the Tennessee river, the said house and lot being the same that was occupied, at the date of said deed, by Michael Pitts, and contains about half an acre of ground; which said deed is now in the possession of said William H. Pope, and was acknowledged by the said Leroy Pope before the clerk of the said county court of Madison county, and recorded, according to the form prescribed by the statutes of the State of Alabama, in book P, page 1, to which registration or record of said deed your orators pray leave to refer, whenever reference to the same may be necessary.

And your orators further complain and say, that in still further pursuance of the fraudulent agreement aforesaid between the said Leroy Pope and the said William H. Pope, and with intent on the part of the said Popes, further and more effectually to hinder, delay, and defraud your orators in the collection of their said debt, the said Leroy Pope, on the same 22d of March, 1834, by his other deed of bargains and sale, which is now in the possession of said William H. Pope, purporting to be founded on a consideration of forty-five thousand and one dollars, conveyed to the said William H. Pope the following personal property, viz: One hundred and twenty-one slaves, with all their future increase, namely, seventeen negro men—Ezier, Mark, Pompey, Anthony, Kye, Bill (F), Bill (C), Bill (B), Robert, Bannister, Leroy, George, Sam, Burjess, Armstead, Reuben, and Moses: twenty-two women, namely, Lucy, Milly, Phoebe and her three children, namely, Sarah, Henry, and Giles; Fanny (F) and her five children, Sukey, Nelly, Polly, Mahala, and Fanny; Aggy and her four children, Frank, Parthena, Pompey, and Emily; Ellen and her four children, Zachariah, Ellen, Peggy, and Tom; Rachael and her three children, Jackson, Nelly, and Leroy; Mimy and her three children, Becky, Margaret, and William; Abby and her two children, William and Julia; Eliza and her one child, George; Sylva and her four children, Celina, Dolly, Cornelius, and Parthena; Mary and her five children, Priscilla, Augustus, Cornelius, Matilda, and Leroy; Henna and her four children, Milly, Ellen, Calvin, and Elizabeth; Nelly (H) and her two children, Elias and Harvey; Fanny and her five children, Martha, George, Oradne, Richard, and Dick; Harriet and her two children, Nelson and Sarah; Clarissa and her two children, Alroy and William; Franky and her three children, William, Francis, and Peggy; Mary (W L), Mary (B E), Flora: fourteen boys, namely, Peter, Charles, *Charles*, Peyton, Len, Bill, Mark, Jim, Eziah, Jess, John, Reuben, Burgess, and Leroy; sixteen girls, namely, Cinda, Frances, Cinda, Hermy, Eliza, Jane, Mandy, Fanny, Aggy, Peggy, Anna, Sally, Lucy, Polly, Margaret, and Delia, and Sarah, a woman: Also, all the household and kitchen furniture of the said Leroy, of every description and kind, (the quantity, and description, and value of which furniture are unknown to your orators): Also, forty-five horses, including mares and colts; seventy-five head of cattle, including work oxen: also all the hogs, sheep, and goats of said Leroy Pope on both of his plan-

tations: also all of his corn, fodder, rye, and oats on both of his plantations; together with all his plantation tools of every description, with all his wagons, carts, and blacksmith's tools on each plantation. Which said last mentioned deed was also acknowledged by the said Leroy Pope, before the clerk of the county court of said county, on the 31st day of March, 1834, and recorded by said clerk on the 2d April, 1834, in book P, pages 1 & 2; and your orators beg leave to refer thereto, if necessary, as part of this bill.

Your orators further complain and say, that the said Leroy Pope and William H. Pope, from the dates of said deeds to the death of said Leroy Pope, which occurred the year 1844, in Huntsville, in the northern district aforesaid, held the said property, both real and personal, precisely as it was held, to all appearances, before the deeds aforesaid; that the said property, both real and personal, was never delivered into the exclusive possession of said William H. Pope, but remained as much in the possession of the said Leroy as the said William; and that the said Leroy and William have enjoyed the proceeds and profits of said property jointly, and to the injury and in fraud of the rights of your orators.

Your orators expressly charge, that the sums mentioned in said deeds as the consideration thereof in hand paid, viz., the sum of $15,000 in the first, and the sum of $45,000 in the second, were not the true and real considerations of said deeds; that the said William H. Pope had no means or resources, or property of any description, or credit, by which he could have raised said sums of money. And they further charge and say, that such a pretended sale would never have been made, but for the design and intent, on the part of said Leroy Pope and William H. Pope, to hinder, delay, and defraud your orators in the collection of the debt aforesaid, which was rapidly maturing into judgment at the dates of said deeds. And they further expressly charge, that if the assuming to the United States by the said William H. Pope, of the debt due by Leroy Pope to the said United States, was the true consideration of said deeds, then the said Leroy and the said William intended to hinder, delay, and defraud your orators in the collection of their debt as aforesaid; the said property being more than sufficient, at the dates of said deeds, to pay the debt of Leroy Pope to the United States three times over.

Your orators further complain and say, that the said William H. Pope, on the 24th of March, 1834, by his deed of mortgage of that date, purporting to be founded on a consideration of twenty-nine thousand two hundred and ninety dollars and ninety cents, conveyed to Virgil Maxcy, Solicitor of the Treasury of the United States, and his successor in office, (the aforesaid Charles B. Penrose being his successor in said office, and now acting as such,) for the use and benefit of the United States, the above described tracts or parcels of land, being the same identical tracts of land and parcels of land that were conveyed by the said Leroy Pope to the said William H. Pope, and that have been herein before accurately described; which said description, in the

previous part of this bill, your orators beg leave to refer to. And the said William H. Pope, by his said last mentioned deed of mortgage, dated as aforesaid, conveyed to the said Virgil Maxcy, Solicitor of the Treasury as aforesaid, and his successors in office, to the use and benefit aforesaid, and on the consideration aforesaid, the whole of the one hundred and twenty-one slaves aforesaid; which said real and personal property the said William H. Pope so conveyed as aforesaid to the said Maxcy, Solicitor of the Treasury, and his successors in office, with the intent and design further to hinder, delay, and defraud your orators in the collection of their debt aforesaid.

Your orators further complain and say, that the said last mentioned deed of mortgage by the said William H. Pope, recites, among other things, that one James W. Camp had executed to the said Leroy Pope his four several notes, for and in consideration of a certain tract or parcel of land before that time, viz., on the 18th of March, 1834, sold and conveyed by the said Leroy Pope to the said James W. Camp, and known as the Egbert Harris plantation, by which said notes the said Camp had promised to pay the said Leroy Pope the sum of twenty thousand dollars, in four equal annual instalments from the date of said notes successively; each of said notes to bear interest from the 1st of January, 1834: and also, that the said Leroy Pope had assigned the said four notes on said Camp to the United States. It further recites, that the lands conveyed in the said mortgage had been subject to a large debt due by the said Leroy Pope to the United States, a part of which was secured by the above described notes on the said Camp, and that the said William H. Pope had offered that the said debt on the said Camp, then belonging to the said United States, should be and constitute a lien on the lands and personal property conveyed by said Pope to the said Maxcy. And it further recites, that the said Wm. H. Pope had bought the lands above described in the deed from Leroy Pope to William H. Pope, by the permission of the United States; that the said William H. Pope, on the day of the date of his said mortgage, had executed to the said United States his five several notes, amounting in all to the sum of twenty-nine thousand two hundred and ninety dollars and ninety cents, principal, payable as follows, viz: one note, payable twelve months after date, for five thousand eight hundred and fifty-eight dollars and eighteen cents, with interest from its date at the rate of six per centum per annum, and dated 24th March, 1834; one note of same date, payable three years after date, for the same amount, with interest from its date at the same rate; one note, payable four years after date, bearing the same date, for the same amount, with the same interest; and one note of same date and amount, payable five years after its date, and bearing interest at the same rate, and from the same date. The total amount of which said sums, with the said debt on the said Camp, amount to the sum of forty-nine thousand two hundred and ninety-four dollars and fifty cents; which total sum, made up of the items last mentioned, with the interest accrued and accruing thereon, the said William H. Pope, in and by his said deed of mortgage, covenanted to secure; and the said mortgage contained a defea-

zance to the effect that if the said Pope and Camp should fully pay and satisfy the United States the aforesaid several sums with interest, as specified in their notes aforesaid, as they respectively fell due, then the said mortgage to become void, and the said real and personal estate so conveyed to be retroceded to the said William H. Pope, his heirs, executors, administrators, or assigns; otherwise, to remain in full force and virtue. Which said mortgage was duly acknowledged and recorded in the office of the clerk of the county court for the county of Madison, and in northern district aforesaid; to which registration and record your orators beg leave to refer, when necessary, as part of this bill—the said mortgage not being in possession of your orators.

Your orators further complain and say, that the said Leroy Pope, by his deed of bargain and sale, bearing date the 18th of March, 1834, conveyed to the aforesaid James W. Camp certain tracts or parcels of land therein described, for and in consideration of twenty-five thousand dollars to him in hand paid by the said Camp; and that four notes of the said Camp, hereinbefore described, amounting to twenty thousand dollars, and being in part of said consideration, were assigned by the said Leroy Pope, to whom they were made payable, to the United States. Your orators pray that the registration and record of the said deed to the said Camp, (which were, according to the laws of the State of Alabama,) in the clerk's office of the county court for the county of Madison, and in said northern district, may be referred to if necessary as exhibits to this bill—the said deed not being in possession of your orators. They further say, that the said James W. Camp and his wife Mary J. Camp, on the 24th day of March, 1834, by their deed of mortgage of that date, conveyed to said Maxcy, solicitor, &c., as aforesaid, to secure the payment of the four notes so assigned as aforesaid to the United States, the same tracts or parcels of land which had been conveyed as aforesaid by the said Leroy Pope to the said Camp, which said mortgage was duly admitted to record in the office of the clerk of the county court of Madison county, in the northern district aforesaid, and to which registration and record your orators beg leave to refer, if necessary, as parts of this bill, they not having possession of said mortgage; the said mortgage contained a defeazance to the effect, that if the said Camp should pay and satisfy the said United States to the full amount of said four notes, principal and interest, as they respectively fell due, then the said mortgage to be void, otherwise to remain in full force and virtue.

Your orators further complain and say, that the said last mentioned mortgage, made by the said Camp to secure the payment of said four notes, conveyed lands of great value, and amply sufficient to secure the said notes; and that the whole of the said sum of twenty thousand dollars, with all interest accruing thereon has, in fact, been paid by the said Camp to the United States; and your orators say, that the undertaking on the part of the said William H. Pope to secure the payment of the twenty thousand dollars due as aforesaid from the said James W. Camp to the United States, formed a part of the consideration of said deeds from Leroy Pope to William H. Pope, ample as was the secu-

rity from the mortgage, from Camp himself, as aforesaid, as the subsequent payment in full of said notes has shown; and your orators further say, that the five notes of the said William H. Pope, hereinbefore mentioned and described, amounting to the sum of twenty-nine thousand two hundred and ninety dollars and ninety cents, are the only other or additional considerations, paid, or undertaken to be paid, by the said William H. Pope to the said Leroy Pope, for the conveyances of the lands and slaves and personal property hereinbefore mentioned and described; and your orators state that the said sum of twenty-nine thousand two hundred and ninety dollars and ninety cents was, at the dates of the aforesaid deeds from Leroy Pope to William H. Pope, the true indebtedness of the said Leroy Pope to the United States; and that the undertaking by the said William to pay the said sum of $29,290.90 was the only consideration for the conveyances aforesaid from the said Leroy; the undertaking to secure the aforesaid debt of Camp being a false show, intended to deceive the creditors of the said Leroy Pope. And your orators say, that the property, real and personal, conveyed by the said Leroy to the said William, (independently of the four notes of Camp, as aforesaid,) was worth at the dates of said deeds of said Leroy to said William largely over one hundred thousand dollars; your orators would say, most probably, one hundred and fifty thousand dollars; and that the said conveyances are as fraudulent on their face as they were in their natures. And your orators say, that if any other or further consideration passed from the said William to the said Leroy in payment for said real and personal property, it was derived by the said William from the means and resources of the said Leroy, and fraudulently furnished by him for the purpose of giving a show of fairness to a fraudulent conveyance.

Your orators further complain and say, that the annual value of the crops and other profits of the said real and personal property, conveyed as aforesaid by the said Leroy to the said William H. Pope, from the year 1834, including the crop of that year, have been very great, amounting, as your orators are advised and believe, in some instances to twenty or twenty-five thousand dollars, and that the said Leroy and the said William received and enjoyed them conjointly, and that there was a fraudulent agreement between them in the original transfer of the property to the said William to that effect, the object of which agreement was to hinder, delay, and defraud your orators.

Your orators further complain and say, that the said William H. Pope has made sale of a large number of the negroes, conveyed to him by the said Leroy as aforesaid, to one Willis Pope, the brother of said William; but the number of said negroes, their names, and the prices obtained for them, are wholly unknown to your orators. They are advised and believe that the notes executed by the said Willis Pope for the purchase of said negroes, have been placed in the hands of the district attorney of the United States for the northern district aforesaid, as a still further security for the payment by said William of his subsisting indebtedness to the United States, growing out of the conveyances herein

set forth and described; but the amount of said notes, and the payments, if any, that have been made upon them, your orators are wholly ignorant of.

Your orators further complain and say, that the said Leroy Pope departed this life in the year 1844, intestate, as they are advised and believe, and that the said Samuel Breck, defendant hereto, has been duly and regularly appointed by the orphan's court of Madison county, in the northern district aforesaid, administrator of the goods and chattels, rights and credits of said Leroy, and that he is fully authorized to act as such administrator, and has all the rights conferred in such cases by the laws of the State of Alabama.

Your orators further say, that after their judgment as aforesaid was obtained against the said Leroy Pope, viz., in the year 1835, and in the latter part of said year, the office of the clerk of the district court of the United States for the northern district of Alabama, then held in Huntsville, in said district, was by accident consumed by fire, and that the original papers in the case of your orators against the said Leroy Pope, together with many others, and many of the records of said court, were destroyed; that amongst the few books rescued from the flames were the execution book of the said clerk, kept by him as required by law, and the book containing the minutes of the proceedings of said court; in which said execution book is to be found the clerk's entry of the case of your orators against the said Leroy Pope, setting forth the amount and the date of the judgment aforesaid, and the issuance of execution upon said judgment; the said minute book also showing the judgment aforesaid, and signed by your honor as presiding judge at the term of said court when said judgment was rendered. Your orators pray leave to refer to said entries in said books, if necessary, as parts of their bill. They further say that the original execution, which was issued in said case, has also been destroyed by fire as aforesaid, with the return of the marshal thereon, as before described; and that after the said fire your orators, by their attorney, directed the clerk of said court to issue an alias execution against the said Pope, which was done, and that your honor, upon the defendants' motion, quashed the said execution at a term of said court held in the year 1836. As well as your orators now recollect, the ground of the decision of your honor being that the destruction of the records and papers of said office had taken away the legal foundation for said execution.

Your orators, admitting the justice and the validity of the claim of the United States, as set forth in the deed of trust made by Leroy Pope to Louis McLane, Secretary of the Treasury of the United States, for the benefit of the United States, as hereinbefore described, not denying the right of the United States to obtain full satisfaction from the said William H. Pope, on his mortgage aforesaid to Virgil Maxcy and his successors in office, for the use and benefit of the United States, and not desiring to postpone the collection of the debt due by the said William H. Pope to the United States, yet charge that the deeds of conveyance hereinbefore described, from Leroy Pope to William H. Pope,

were made to hinder, delay, and defraud your orators in the collection of their debt aforesaid; that the mortgage made by the said William H. Pope to the said Maxcy, for the use and benefit of the United States, was fraudulently intended by the said William H. Pope still further to hinder, delay, and defraud your orators, and to carry into more full effect the fraudulent agreement originally made between the said Leroy Pope and the said William H. Pope; and that if any permission was ever given by the United States to the said William H. Pope, as is recited in his mortgage aforesaid, to purchase the lands aforesaid of the said Leroy Pope, it was without any knowledge on the part of the United States, or their agents, of the just claim of your orators, and of the fraudulent agreement between the said Leroy and the said William, and the fraudulent object and intent of the said William in making the mortgage aforesaid.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer. That is to say:

1st. What was the value of the land and negroes conveyed by the said Leroy Pope to the said William H. Pope, in the two deeds hereinbefore described, at the dates of said deeds?

2d. What were the names of the negroes conveyed by the said Leroy to the said William H. Pope?

3d. What has been the increase of said negroes since the date of said deed conveying them, and the names and value of the children born since the date of the deed?

4th. How many of the said negroes, conveyed as aforesaid to the said William, have been sold by the said William H. Pope to Willis Pope, or to any other person or persons?

5th. What are the names of the negroes sold by the said William to Willis Pope, or to any other person, and what increase has there been among the negroes so sold by the said William?

6th. What prices did Willis Pope agree to give for said negroes, and what payments did he bind himself to make?

7th. What portions of the lands and town lots conveyed by the said Leroy Pope to the said William have been sold since the date of said deed, viz., 22d March, 1834, and who were the purchasers, and what prices did they pay, or agree to pay?

8th. Was the money received for the sale of said negroes, and lands, and town lots, if any, applied by the said William H. Pope to the payment of the debt due to the United States by the said Leroy Pope, and assumed by the said William H. Pope?

9th. What is the number, at this time, of the negroes conveyed to the *the* said William H. Pope, as aforesaid, including their increase?

10th. What was the value of the household and kitchen furniture conveyed by the deed of said Leroy to said William H. Pope?

11th. What particular articles of furniture were included in the general description in the deed, "all my household and kitchen furniture, of every description and kind?"

12th. Was any silver plate amongst the household furniture; and if so, of what description and value was it?

13th. What was the value, at the date of the deed, of the horses, mares, and colts, and cattle, and oxen, and hogs, sheep, and goats, and corn, fodder, rye, oats, plantation tools, wagons, carts, and blacksmith's tools, conveyed by the said Leroy to the said William, in his deed of the 22d March, 1834?

14th. What was the value of the cotton crop and other crops and profits derived from the real and personal property conveyed by the said Leroy Pope to the said William H. Pope, for the year 1834?

15th. Was not property, both real and personal, more valuable, and sold at higher prices, in the year 1834, than at present?

16th. What has been the annual income of the property, real and personal, conveyed by the said Leroy to the said William, since, and exclusive of, the year 1834?

17th. What was the value of the house in which Leroy Pope lived in the year 1834, and the adjoining plantation, commonly known as the homestead, or home plantation?

18th. Did James W. Camp, aforesaid, agree to pay $25,000, or $20,000, for the land conveyed to him, as aforesaid, by Leroy Pope? If he agreed to pay twenty-five thousand dollars, why was not the other five thousand paid, or assigned, to the United States, as well as the twenty thousand recited in the mortgage of said William H. Pope?

19th. Why does the deed of Leroy Pope to Louis McLane, dated 18th October, 1831, recite the debt due by said Pope to the United States, to be $38,133.22, and the mortgage of the said William H. Pope, as aforesaid, recite the said debt *is* $49,290.50?

20th. Did the said William Pope own or possess any real or personal property, as his own exclusively, at the date of the deeds aforesaid, viz., the 22d of March, 1834; and if so, what was the species and value of said property?

21st. Was any thing due from the said Leroy Pope to the said William, for and on account of the previous services of said William in superintending the said Leroy's affairs; and if so, what amount was due?

22d. What was the actual and real amount paid by the said William H. Pope to the said Leroy Pope, in consideration of the conveyances of real and personal property made to him on the 22d of March, 1834?

23d. If the considerations expressed in the two deeds aforesaid of Leroy Pope to William H. Pope, viz., $15,000, in the first, and $45,000, in the second, be the two considerations of said deeds, how did the said William Pope obtain the said sum of $60,000?

24th. What was the true and real consideration of the two deeds of the 22d of March, 1834, as before mentioned?

Your orators pray your honor that the aforesaid fraudulent conveyances of the said Leroy Pope and the said William H. Pope may be declared null and void, and that the said William H. Pope may, by a decree of your honorable court, be compelled to pay to the United States the balance still due, or the debt of the said Leroy Pope to the United States, and which was assumed to be paid by the said William H. Pope out of the property, real and personal, conveyed as aforesaid, and that so much of the said property, real and personal, as may be left, after satisfying the claim of the United States, may be decreed to be subject to the claim of your orators as herein set forth, with all the interest which has accrued, or may accrue thereon. And your orators pray your honor to grant them such other and further relief in the premises, as their case may require, and to equity may belong.

May it please your honor to grant unto your orators the writ of subpœna against the said Samuel Breck, administrator as aforesaid, William H. Pope, and Charles B. Penrose, Solicitor of the Treasury of the United States, to be issued out of this honorable court, to be directed as is usual in such cases, commanding as is usual: To the end that the said Breck, administrator as aforesaid, the said William H. Pope, and the said Charles B. Penrose, solicitor as aforesaid, be made defendants hereto, and be compelled to appear and answer all and singular the premises aforesaid, and to stand and abide by, and perform, such order, direction, and decree therein, as to your honor shall seem meet; and your orators will ever pray, &c.

McCLUNG & WALLACE,
Solicitors for complainants.

The defendant, William H. Pope, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24. The defendant, Samuel Breck, is required to answer the interrogatories numbered, respectively, 21, 22, 24.

(Endorsed.)—Filed in my office the 15th day of February, 1845.
Teste: B. T. MOORE, *Cl'k.*

And afterwards, to wit, on the 21st day of February, in the year of our Lord one thousand eight hundred and forty-five, was issued from the office of the clerk of the district court of the United States for the northern district of Alabama a subpœna in said case, in the words and figures following, to wit:

Subpœna.

The President of the United States of America, to the marshal of the northern district of Alabama, greeting:

You are hereby commanded to summon Samuel Breck, administrator of the estate of Leroy Pope, deceased, and William H. Pope, who are citizens of the State of Alabama, residing in the northern district thereof, and Charles B. Penrose, who is a citizen of the District of Columbia, that they, laying aside all excuse, appear personally at the of-

fice of the clerk of the district court of the United States for the northern district of Alabama, at the court-house, in the town of Huntsville, in said northern district, on the rule day to be held on the first Monday in April next, to answer the bill of complaint of John Hagan and Thomas Barrett, formerly commission merchants and partners trading under the firm name and style of John Hagan & Co., who are citizens of the State of Louisiana, plaintiffs, exhibited on the chancery side of said court, against the said Samuel Breck, administrator of the estate of Leroy Pope, deceased, William H. Pope, and Charles B. Penrose, defendants; a certified copy of which bill of complaint is herewith issued, to be by you delivered to the said defendants. Herein fail not, and have you then and there this precept, with your return thereon endorsed.

Witness the Hon. William Crawford, judge of said district court of the United States, for the northern district of Alabama, this twenty-first day of February, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States of America the sixty-ninth.

[SEAL.]

Attest: B. T. MOORE, *Clerk of said court.*

Issued 21st day of February, 1845.

Mem.—The defendants are to enter their appearances in this suit in the clerk's office, on or before the day at which this writ is returnable, otherwise the bill aforesaid may be taken pro confesso.

Attest: B. T. MOORE,
Clerk D. C. U. S. N. D. Ala.

(Endorsed.)—Returnable to April rule day, 1845.

Marshal's return.

(Marshal's return.)—Executed by leaving a copy hereof at the dwelling-house of said William H. Pope, defendant, with his wife, and on the defendant, Samuel Breck, by leaving a copy hereof with his wife. 5th March, 1847.

B. PATTESON, *Mar.*
By his deputy, R. W. COLTART.

And afterwards, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-five, was filed in the office of the clerk of said district court a bill of revivor in said cause, in the words and figures following, to wit:

To the honorable William Crawford, judge of the district court of the United States for the northern district of Alabama, sitting in chancery in Huntsville:

John Hagan and Thomas Barrett, late partners, trading under the firm and style of John Hagan & Co., who are citizens of the State of Louisiana, shew to your honor that, on the 15th day of February, eighteen hundred and forty-five, they exhibited their original bill of complaint in this honorable court against William H. Pope, Samuel

Breck, administrator of all and singular the goods and chattels, rights and credits, which were of Leroy Pope, deceased, who died intestate, in the county of Madison, and State of Alabama, and Charles B. Penrose, then Solicitor of the Treasury of the United States.

Complainants further shew to your honor that subpœnas in said case were, on the 5th day of March, 1845, served on the said William H. Pope and Samuel Breck, and that no answers, pleas, or demurrers, to said bill, have as yet been filed. Said Charles B. Penrose has not been served with process. Before any other action was had in said cause the said Charles B. Penrose ceased to be the Solicitor of the Treasury, and Seth Barton, now a citizen of the District of Columbia, and before his appointment a citizen of the State of Louisiana, is the Solicitor of the Treasury. And said suit and proceedings having become abated by the fact that said Charles B. Penrose has ceased to be the Solicitor of the Treasury, complainants are advised that they are entitled to have the same revived against the said Seth Barton, the present Solicitor of the Treasury. Therefore, that the said suit and proceedings, which became so abated by the fact that said Charles B. Penrose has ceased to be the Solicitor of the Treasury, may stand and be revived against the said Seth Barton, and be in the same plight, state, and condition, as the same were in at the time of the abatement thereof; and that complainants may have the benefit thereof, or that the said Seth Barton, solicitor as aforesaid, may show good cause why the said suit and proceedings should not be revived, and that the same may be revived accordingly. May it please the court to grant the writ of subpœna against the said Seth Barton, Solicitor of the Treasury, &c.

J. W. McCLUNG &
E. R. WALLACE,
Solicitors for complainants.

(Endorsed.)—"Filed in my office this 22d day of April, 1845.
B. T. MOORE, *Cl'k D. C.*

And afterwards, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and forty-five, was filed in the office of the clerk of said district court the demurrer of William H. Pope, one of the defendants in said cause, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA:

District court of the United States, for the northern district of Alabama, at Huntsville:

The demurrer of William H. Pope, one of the defendants to the bill of complaint of John Hagan and Thomas Barrett, formerly commission merchants and partners, trading under the firm name and style of John Hagan & Co.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in and by said bill set forth and complained of to be true, in the manner and form as the same are therein

set forth and alleged, saith he is advised by his counsel that there is no matter or thing in said bill contained good and sufficient in law to call this defendant in question in this honorable court for the same, but that there is good cause of demurrer thereto, and therefore this defendant doth demur thereunto, and for causes of demurrer this defendant saith: That the said bill of the said complainants (in case the allegations therein contained were true, which this defendant doth in no sort admit,) contains not any matter of equity whereon this court can ground any decree, or give the complainants any relief or assistance as against this defendant, and because the bill contains no equity.

And this defendant further saith, that this court has no jurisdiction of the pretended cause of action which said bill exhibits, nor of the said Charles B. Penrose, Solicitor of the Treasury, who is joined as one of the defendants, as appears by the bill itself, it appearing by the bill that he is not a citizen of one of the States, but of the District of Columbia, and that said bill is multifarious in respect of the defendants, and of the interest sought to be reached, joining those that are distinct.

And this defendant saith said bill cannot be sustained because of the great lapse of time, and the laches of the complainants appearing by the bill itself, as well in regard to their pretended demand as to their proceedings to recover the same; of all which this defendant claims advantage, and relies upon the same as a bar.

Wherefore, and for divers other errors and imperfections in said bill appearing, this defendant doth demur thereto, and humbly demands the judgment of this honorable court whether he shall be compelled to put in any further or other answer to said bill, and humbly to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

SILAS PARSONS,
Solicitor and counsel for def't.

The undersigned, who is counsel for the defendant, certifies that, in his opinion, the foregoing demurrer is well founded in point of law.

S. PARSONS.

5th May, 1845.

William H. Pope, defendant to the bill of complaints, to which he offers the foregoing demurrer, being first duly sworn, says that the said demurrer is not interposed for delay.

WM. H. POPE.

Subscribed and sworn before me, this 5th day of May, 1845.

B. T. MOORE,
Clerk D. C. and U. S. com'r.

(Endorsed.)—"Filed 5th May, 1845.
Teste: B. T. MOORE, *Clerk D. C.*"

And afterwards, to wit, on the said fifth day of May, was likewise filed in said clerk's office the second demurrer of said William H. Pope, one of the defendants in the cause, in the words and figures following, to wit:

THE UNITED [STATES] OF AMERICA:

The district court of the United States for the northern district of Alabama, at Huntsville:

The second demurrer of William H. Pope, one of the defendants, to the bill of complaint of John Hagan and Thomas Barrett.

This demurrer is to so much of the bill as relates to the personal estate therein sought. This defendant, by further protestations, not admitting all or any of matters and things in the bill set forth to be true, as to so much of the bill as seeks to reach or subject the personal estate or discovery in relation thereto, in manner and form as therein alleged, saith, he demurs thereunto, and for cause of demurrer shows that it appears by the showing of said bill that no cause of action for said personal estate accrued against this defendant at any time within six years immediately preceding the time when said [ ] was exhibited, this defendant is fully protected by the statute of limitations of six years; for which reasons, and for divers other causes, this defendant demurs to so much of said bill as aforesaid, and prays the judgment of this honorable court whether he shall make any or other answer thereto.

SILAS PARSONS,
Solicitor and counsel for def't.

The undersigned, who is counsel for the defendant, certifies that, in his opinion, the foregoing demurrer is well founded in point of law.

S. PARSONS.

May 5th, 1845.

William H. Pope, defendant to the bill of complaint to which he offers the foregoing demurrer, being first duly sworn, says, that the said demurrer is not interposed for delay.

WM. H. POPE.

Subscribed before me, and sworn before me, this fifth day of May, 1845.

B. T. MOORE,
Clerk D. C., and U. S. commissioner.

(Endorsed.) Filed 5th May, 1845.
Teste: B. T. MOORE, *Clerk D. C.*

Afterwards, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and forty-five, was filed, in the office of the clerk of said district court, the demurrer of Samuel Breck, one of the defendants in said cause, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA:

District court of the United [States] for the northern district of Alabama, at Huntsville.

The demurrer of Samuel Breck, administrator of the estate of Leroy Pope, deceased, one of the defendants to this bill of complaint of John Hagan and Thomas Barrett, formerly commission merchants and part-

ners, trading under the firm name and style of John Hagan & Co. This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in and by said bill set forth and complained of to be true, in the manner and form as the same are therein set forth and alleged, saith he is advised by his counsel that there is no matters or things in said bill contained good and sufficient in law to call this defendant in question in this honorable court for the same, but that there is good cau-e of demurrer thereto, and therefore this defendant doth demur thereunto; and, for causes of demurrer, this defendant saith, that the said bill of the said complainants (in case the allegations therein contained were true, which this defendant doth in no sort admit,) contains not any matter of equity whereon this court can ground any decree, or give the complainants any relief or assistance, as against this defendant; and because the bill contains no equity. And this defendant further saith, that this court has no jurisdiction of the pretended cause of action which said *said* bill exhibits, nor of the said Charles B. Penrose, Solicitor of the Treasury, who is joined as one of the defendants, as appears by the bill itself, it appearing by the bill that he is not a citizen of one of the States, but of the District of Columbia; and that said bill is multifarious in respect of the defendants and of the interests sought to be reached, joining those that are distinct. And this defendant saith said bill cannot be sustained because of the great lapse of time, and the laches of the complainants appearing by the bill itself, as well in regard to their pretended demand as to their proceedings to recover the same; of all which this defendant claims advantage, and relies upon the same as a bar.

Therefore, and for divers other errors and imperfections in said bill appearing, this defendant doth demur thereto, and humbly demands the judgment of this honorable court whether he shall be compelled to put in any further or other answer to said bill; and humbly prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

S. PARSONS,
Solicitor and counsel for defendant.

The undersigned, who is counsel for the defendant, certifies that, in his opinion, the foregoing demurrer is well founded in point of law.

S. PARSONS.

May 5th, 1845.

Samuel Breck, defendant to the bill of complaint's to which he offers the foregoing demurrer, being first duly sworn, says that the said demurrer is not interposed for delay.

SAMUEL BRECK.

Subscribed and sworn before me, this 5th day of May, 1845.

B. T. MOORE,
Clerk D. C., and U. S. commissioner.

(Endorsed.) Filed 5th May, 1845.
Teste: B. T. MOORE, *Clerk D. C.*

And afterwards, to wit, on the said fifth day of May, was likewise filed, in said clerk's office, the second demurrer of said Samuel Breck, one of the defendants in said cause, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA:

The district court of the United [States,] for the northern district of Alabama, at Huntsville.

The second demurrer of Samuel Breck, administrator of the estate of Leroy Pope, deceased, one of the defendants to the bill of complaint of John Hagan and Thomas Barrett.

This demurrer is to so much of the bill as relates to the personal estate therein sought. This defendant, by further protestations, not admitting all or any of [the] matters and things in the bill set forth to be true, as to so much of the bill as seeks to reach or subject the personal estate or discovery in relation thereto in manner and form as therein alleged, saith he demurs thereunto, and, for cause of demurrer, shows that it appears by the showing of said bill that no cause of action for said personal estate accrued against this defendant at any time within six years immediately preceding the time when said bill was exhibited, and because it does appear by the bill that, as to the personal estate sought thereby to be subjected, this defendant is fully protected by the statute of limitations of six years; for which reasons, and divers other causes, this defendant demurs to so much of said bill as aforesaid, and prays the judgment of this honorable court whether he shall make any further or other answer thereto.

S. PARSONS,
Solicitor and counsel for defendant.

The undersigned, who is counsel for the defendant, certifies, that the foregoing demurrer is in his opinion well founded in point of law.

SILAS PARSONS.

May 5, 1845.

Samuel Breck, defendant to the bill of complaint's to which he offers the foregoing demurrer, being first duly sworn, says that the said demurrer is not interposed for delay.

SAMUEL BRECK.

Subscribed and sworn before me, this 5th day of May, 1845.

B. T. MOORE,
Clerk D. C., and U. S. commissioner.

(Endorsed.) Filed 5 May, 1845.
Teste: B. T. MOORE, *Clerk D. C.*

And now, afterwards, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and forty-five, it being the first Monday in said month, (May,) and a rule day of said court, held at he office of the clerk of said court, an entry was made in said cause in

the words following, to wit: "At a rule day of the district court of the United States of America, for the northern district of Alabama, held, pursuant to a rule of the Supreme Court of the United States aforesaid, at the office of the clerk of the district court aforesaid, at the court-house in the town of Huntsville, in said district, on the first Monday, (being the fifth day) of May, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the said United States the sixty-ninth year, come the defendants, William H. Pope and Samuel Breck, administrator of Leroy Pope, deceased, by their solicitor, and the said defendants, Pope and Breck, administrators, &c., as aforesaid, this day file their demurrers to the bill of said complainants; and now, on application of said complainants' counsel, this day made, it is ordered, that the demurrers aforesaid be set down for argument.

Attest: B. T. MOORE, *Clerk D. C.*

And now, afterwards, to wit, on the twenty-second day of May, it being a day of the term of said district court, begun and held at the court-house, in the town of Huntsville, in said district, on the third Monday in said month, (May,) in the year of our Lord one thousand eight hundred and forty-six, "come the parties, by their solicitors, and the demurrers of the defendants, William H. Pope and Samuel Breck, administrator, &c., of Leroy Pope, deceased, being argued by counsel, and fully understood by the court, because it appears to the court that the matters and things in complainants' said bill of complaint are not good and sufficient to enable them to have and maintain their aforesaid cause, it is ordered, adjudged, and decreed by the court, that said demurrers be sustained; that said complainants' bill be dismissed; and that said defendants go hence, &c., and recover against said complainants the costs in this behalf expended, &c."

And afterwards, to wit, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-seven, was filed, in the office of the clerk of said district court, a petition in said cause in the words and figures following, to wit:

To the honorable William Crawford, judge of the district court of the United States for the northern district of Alabama.

The petition of John Hagan shows to your honor that, on the day of , 18 , John Hagan & Co. filed their bill in chancery, in the district court of the United States for the northern district of Alabama, at Huntsville, against William H. Pope, C. B. Penrose, Solicitor of the Treasury of the United States, and Samuel Breck, administrator of all and singular the goods and chattels, &c., of Leroy Pope, late of said district, deceased; and afterwards, on the suggestion that said Penrose had been succeeded in said office by Seth Barton, said bill was revived in the name of said Barton.

The said Barton, however, never entered an appearance in said case. The same was heard and determined at the May term, 1846, of said court, when said bill was dismissed at the costs of complainants.

Said John Hagan further shews, that since the rendering of said decree the said Thomas Barrett hath departed this life. And the said complainant, Hagan, as surviving partner, now desiring to appeal from said decree, petition your honor for an appeal to the next term of the Supreme Court of the United States, at Washington city, and pray that a citation may issue commanding said Pope and Breck, administrator as aforesaid, to be and appear at the Supreme Court, &c.

JOHN HAGAN.

19*th May*, 1847.

Allowed this 21st day of May, 1847.

WM. CRAWFORD, *Judge*.

(Endorsed.) Filed in my office the 21st of May, 1847.
Teste: B. T. MOORE, *Clerk*.

And on the said twenty-first day of May, eighteen hundred and forty-seven, was filed in the office of the clerk of said district court, an affidavit in the words and figures following, to wit: I, Henry A. Hoffmeyer, being duly sworn, do depose and say, that Thomas Barrett, a late member of the late firm of John Hagan & Company, of New Orleans, departed this life on the 31st day of May, 1846, at the town of Madisonville, in the State of Louisiana.

HENRY A. HOFFMEYER,
Assignee of THOMAS BARRETT.

New Orleans, 8*th October*, 1846.

Sworn to and subscribed, before me.

C. B. BEVERLY, *Justice*.

New Orleans, *October* 8*th*, 1846.

Personally appeared before me, Constantine B. Beverly, a commissioner of the State of Alabama for the State of Louisiana, duly commissioned and sworn as such, Henry A. Hoffmeyer, a resident of the city of New Orleans, State of Louisiana, United States of America, who being duly sworn says, that the facts contained in the above affidavit are true and correct, and that he signed the above.

Given under my hand and seal, at the city of New Orleans, State of Louisiana, United States of America, this eighth day of October, anno domini one thousand eight hundred and forty-six, and the seventy-first year of the independence of the United States of America. [SEAL.]

C. B. BEVERLY,
Commissioner, &c.

(Endorsed.) Filed in my office [the] twenty-first day of May, 1847.
Teste:

T. B. MOORE, *Clerk D. C.*

(*Power of attorney from John Hagan to John H. Lewis.*)

And afterwards, to wit, on the twenty-first day of May, eighteen hundred and forty-seven, was filed in the office of the clerk of said district

court, a power of attorney in the words and figures following, to wit: Know all men by these presents, that I, John Hagan, of the State of Louisiana, and surviving partner of the late firm of John Hagan & Co., (which firm was composed of the said Hagan and Thomas Barrett, deceased,) do hereby constitute and appoint John H. Lewis, of Huntsville, Alabama, my true and lawful attorney, for me and in my name to sign and execute any bond or bonds, writing or writings, of any description whatever, that may be necessary and proper in order to take to the Supreme Court of the United States, either by writ of error or by appeal, the case in chancery in the district court of the United States, for the northern district of Alabama, in which John Hagan & Co. were complainants, and William H. Pope and Samuel Breck, administrator of the estate of Leroy Pope, deceased, and the Solicitor of the Treasury of the United States, were defendants, and which said case was decided at the May term, 1846, of said district court, against the said complainants; hereby ratifying all that my said attorney may do in my name in the premises. In witness whereof I have hereunto set my hand and seal, this 25th day of January, 1847.

JNO. HAGAN. [SEAL.]

STATE OF LOUISIANA, *City of New Orleans*:

Be it known, that on this twenty-fifth day of January, in the year of our Lord one thousand eight hundred and forty-seven, before me, the undersigned notary, personally appeared Mr. John Hagan, of this city, to me personally well known, and signed, sealed, and executed the foregoing power of attorney, and acknowledged the same to be his voluntary act and deed, for the uses and purposes therein *therein* mentioned.

In faith whereof I grant these presents under my signature and seal of office, the day and year first above written.

[SEAL.]

DAVID L. McCAY, *Not. Pub.*

(Endorsed.) Filed in my office this twenty-first day of May, 1847.

Teste:

B. T. MOORE, *Clerk D. C.*

(*Appeal bond.*)

Know all men by these presents, that we, John Hagan, surviving partner of the late firm of John Hagan & Co., which said firm was composed of the said John Hagan and Thomas Barrett, now deceased, and John H. Lewis and James W. McClung, are held and firmly bound unto William H. Pope and Samuel Breck, administrator of all and singular the goods and chattels, rights and credits which were of Leroy Pope, deceased, in the penal sum of three hundred dollars, for the due payment of which we, and each of us do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this twentieth day of May, eighteen hundred and forty-seven.

The condition of the above obligation is such, that whereas, in a suit heretofore pending in the district court of the United States, for the

northern district of Alabama, at Huntsville, wherein said John Hagan and Thomas Barrett, late commission merchants and partners, trading under the firm name and style of John Hagan & Co., were plaintiffs, and said William H. Pope and Samuel Breck, administrator, &c., as aforesaid, were defendants, a decree was rendered by said district court at the May term, 1846, in favor of said defendants, against the said John Hagan & Co., for the costs of said suit; and the said John Hagan & Co., having prayed an appeal from said decree to the Supreme Court of the United States at its next term, to be begun and holden at the city of Washington, on the first Monday in December, eighteen hundred and forty-seven, which appeal was granted by said district court:

Now, if the said John Hagan, surviving partner, &c., as aforesaid, shall prosecute his said appeal to effect, and pay and satisfy any judgment or decree which said Supreme Court may render against him, then this obligation is to be null and void, else to remain in full force and virtue.

JOHN HAGAN, [SEAL.]
By his att'y in fact, JOHN H. LEWIS.
JOHN H. LEWIS, [SEAL.]
J. W. McCLUNG. [SEAL.]

I approve the foregoing bond, this 21st of May, 1847.
WM. CRAWFORD, *Judge*.

(Endorsed.) Filed in my office, 21st May, 1847.
Teste:
B. T. MOORE, *Clerk*.

(*Citation to William H. Pope and Sam'l Breck, administrator, &c.*)

The President of the United States of America, to the marshal of the northern district of Alabama, greeting:

In a cause lately pending in the district court of the United States, for the northern district of Alabama, at Huntsville, between John Hagan and Thomas Barrett, formerly commission merchants and partners, trading under the firm name and style of John Hagan & Co., plaintiffs, against William H. Pope and Samuel Breck, administrator of all and singular the goods and chattels, rights and credits, which were of Leroy Pope, deceased, and Seth Barton, Solicitor of the Treasury of the United States, defendants, a decree was rendered dismissing the bill of the said John Hagan & Co., at the term of said court held on the third Monday in May, 1846, and that the said John Hagan & Co. pay the costs of said suit.

Upon that judgment, the said John Hagan, as surviving partner of said firm of John Hagan & Co., (and it appearing to the satisfaction of the judge of said court that said Thomas Barrett, the other member of said firm of John Hagan & Co., has departed this life since the rendition of said judgment, from an affidavit on file in said cause,) has on this day obtained an appeal to the Supreme Court of the United States, to

be held at the city of Washington, in the District of Columbia, on the first Monday in December next; and, pursuant to the statute in such case, entered into bond with sureties in order to supercede execution of said judgment, until the said appeal should be determined.

We therefore command you to cite the said William H. Pope and said Samuel Breck, administrator, &c., as aforesaid, to appear before our said Supreme Court at the next term thereof, to be held on the first Monday in December next, as aforesaid, to show cause, if any they can, why said decree should not be revived; (let execution of said judgment be accordingly superceded) And at least thirty days before said first Monday in December next, have this writ, with your return thereon, at the office of the clerk of said district court, so that the service thereof may be certified to the said Supreme Court.

Witness William Crawford, judge of said district court, at Huntsville, in said district, this the twenty-first day of May, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the said United States the seventy-first.

WM. CRAWFORD, *Judge*.

(Endorsed.) Filed in my office, 21st May, 1847.
Teste:

B. T. MOORE, *Clerk D. C.*

(*Marshal's return*)

Executed 29th May, 1847.

BENJAMIN PATTERSON,
Marshal, N. D. Ala.

THE UNITED STATES OF AMERICA,
Northern district of Alabama:

I, Benjamin T. Moore, clerk of the district court of the United States of America, for the northern district of Alabama, certify that the above and foregoing pages contain a full and true copy and complete transcript of the record and all the proceedings had wherein John Hagan & Co. were complainants, and William H. Pope, Samuel Breck, administrator of the estate of Leroy Pope, deceased, and Seth Barton, Solicitor of the Treasury of the United States, were defendants.

In testimony whereof I hereto subscribe my name and affix the seal of said court, at office, in the town of Huntsville, in said district, [SEAL.] this first day of June, anno domini one thousand eight hundred and forty-seven, and of the independence of said United States the seventy-first year.

B. T. MOORE,
Clerk of said district court.

Filed 3d Jan'y, 1848.